

N° 1103.

ALLEMAGNE ET HONGRIE

Traité en vue d'assurer la compensation des impositions intérieure et extérieure, et notamment d'éviter la double imposition en matière d'impôts directs, avec protocole final, signé à Berlin, le 6 novembre 1923.

GERMANY AND HUNGARY

Treaty for the Adjustment of Taxation, at Home and Abroad, in particular for the Avoidance of Double Taxation in the Field of Direct Taxation, with Final Protocol, signed at Berlin, November 6, 1923.

¹ TRANSLATION.

No. 1103. — TREATY BETWEEN GERMANY AND HUNGARY FOR THE ADJUSTMENT OF TAXATION AT HOME AND ABROAD, IN PARTICULAR FOR THE AVOIDANCE OF DOUBLE TAXATION IN THE FIELD OF DIRECT TAXATION, SIGNED AT BERLIN, NOVEMBER 6, 1923.

THE KINGDOM OF HUNGARY and THE GERMAN REICH, being desirous of ensuring the equal adjustment at home and abroad in the field of direct taxation, and in particular of preventing double taxation, have concluded the following Treaty.

For this purpose they have appointed as their Plenipotentiaries :

THE KINGDOM OF HUNGARY :

Dr. Gustav EMICH VON EMÖKE, Envoy Extraordinary and Minister Plenipotentiary ;
Dr. Alexander KNEPPO, Ministerial Councillor at the Royal Hungarian Ministry of Finance ;

THE GERMAN REICH :

Baron Ago VON MALTZAN, Under-Secretary of State at the Ministry for Foreign Affairs ;
M. Ernst PEIFFER, Government Privy Councillor and Ministerial Councillor, Director at the Ministry of Finance of the Reich ;

Who, after having exchanged their full powers, found to be in good and due form, have agreed upon the following provisions.

Article I.

Landed property, property in buildings and mortgages, and the revenue (profits) derived therefrom shall only be liable to direct taxation in the State in which the property is situated.

Article II.

(1) Industrial undertakings (the exploitation of a productive undertaking or the exercise of a lucrative profession) and the income derived therefrom shall only be subject to direct taxation in the State in which a business establishment for carrying on the industry is maintained.

(2) The term "business establishment" shall include the manager's office, branch establishments, workshops, offices where purchases or sales are effected, depots, branches, and all other establishments maintained for the purpose of carrying on the industry by the owner himself, or by his partners, responsible agents or other permanent representatives.

¹ Translated by the Secretariat of the League of Nations.

(3) If a single industrial or commercial enterprise possesses business establishments in the territories of both States, direct taxes shall only be levied in each State in proportion to the amount of business transacted in the establishment situated in that State.

(4) Partnerships in undertakings established in the form of companies, with the exception of mining shares (*Kuxen*), shares, founders' shares and other securities, shall be regarded as industrial undertakings.

(5) The foregoing provisions shall not apply to taxes on hawking and other itinerant trades.

Article III.

In the case of income derived from the practice of science, art or letters, teaching or education, or from the exercise of the profession of physician, lawyer, architect or engineer, or any other liberal profession, the provisions of Article II shall only apply in so far as there is a permanent headquarters of the professional activity in the other State.

Article IV.

The present Treaty shall in no way affect the provisions of Section I, paragraph 3, of the Interim Agreement of June 1, 1920, between the Royal Hungarian and the German Governments for the settlement of their mutual economic relations.

Article V.

Salaries or allowances granted for present or past services or professional activities, and payable periodically from the public funds (State, provincial, county, district, municipal and communal funds, etc.), whether in the form of salaries, pensions, half-pay allowances, grants from provident funds, etc., shall only be subject to direct taxation in the State in which the payment is effected.

Article VI.

(1) In cases in which the laws of the Kingdom of Hungary on the taxing of income derived from capital, or the German law of March 29, 1920, on the taxing of profits derived from capital, provide that the tax on interest or on profits accruing from capital shall be collected at the source (by deduction), such tax shall only be levied by the State in whose territory the deduction has to be effected under the above-mentioned laws. If the main establishment is situated in one State and the branch establishment in another State, the tax on interest accruing from the business transacted by the branch establishment shall only be deducted at the source for the benefit of the State in which such branch establishment is situated.

(2) The tax on directors' fees shall be levied in the State in which the head office or the centre of management and control of the undertaking which pays such fees is established.

Article VII.

(1) In other cases Hungarian or German citizens shall only be subject to direct taxation in the State in which they have their domicile, or failing such domicile, in the State in which they are permanently resident.

(2) Should such citizens have a domicile in both States, they will only be subject to direct taxation in the State of which they are nationals. As regards persons who are nationals of both, or of neither, of the States concerned, a special agreement shall be made between the Contracting Parties in respect of individual cases.

(3) The term "domicile" employed in the present Treaty shall be taken to mean the place in which a person occupies a dwelling under circumstances which justify a presumption that he intends to remain there.

(4) The term "permanent residence" employed in the present Treaty shall be taken to mean the place in which the person resides under circumstances which justify a presumption that he intends to dwell in the locality or country and is not merely sojourning therein.

Article VIII.

The provisions of Article I and Article II, paragraphs (1) to (4), and also the provisions of Article VII, shall also apply, *mutatis mutandis*, to legal persons. In the case of such persons the head office or the centre of management or control shall be considered as the place of domicile.

Article IX.

(1) The provisions of Articles I to IV, VII and VIII of the present Treaty shall apply, *mutatis mutandis*, to the assessment of taxes under the laws in force in the Kingdom of Hungary regarding the tax on war profits, and under the German Law of July 3, 1913, concerning the property tax (*Reich Legal Gazette*, page 524), the Law of June 21, 1916, concerning the war tax (*Reich Legal Gazette*, page 561), and the Law of July 26, 1918, (*Reich Legal Gazette*, page 964) concerning a special war levy for the financial year 1918, and the Law of September 10, 1919, (*Reich Legal Gazette*, page 1567) concerning a special war levy for the financial year 1919.

(2) When reckoning the excess profits of companies of the nationality of the country in which they are situated and which are subject to taxation under the laws mentioned in paragraph (1), the peace-time profits shall be determined for the purposes of the Hungarian Laws XXIX, 1916, and IX, 1918, and paragraph 17 of the German Law of June 21, 1916, concerning the war tax, by calculating the statutory percentage of that part of the original or foundation capital or capital invested which corresponds to the ratio between the whole invested and working capital of the company and the fraction of the invested and working capital employed in the other State.

(3) A deduction of excess profits accruing from shares or partnerships, under the Hungarian Laws XXIX, 1916, and IX, 1918, and under paragraph 18 of the German Law concerning the war tax, shall also be made in respect of affiliated companies whose head offices are situated in the territory of the other State.

Article X.

The provisions of Articles I, II, VII and VIII shall apply in particular to the assessment of the Redemption of Property tax under the Hungarian Laws XV of 1921, and XLV of 1921, and to the assessment of the Reich Emergency Contribution under the German Law of December 31, 1919 (*Reich Legal Gazette*, page 2189).

(2) The taxes collected under the aforesaid laws shall be regarded as being of the same nature, it being nevertheless understood that capital (*Kapitalvermögen*) shall only be subject to taxation in the State which under Articles VII and VIII possesses unrestricted rights of taxation.

Article XI.

The provisions of the present Treaty shall not apply in cases in which the provisions of Article X would involve exemption from, or a reduction of, the Hungarian Redemption of Property tax without at the same time involving liability to the Reich Emergency Contribution.

Article XII.

The diplomatic, consular or other representatives of the two States, provided that they are officials by profession, together with officials attached to them and the persons in their service, shall be exempt from direct taxation in the State to which they are accredited. Such exemption shall only apply in so far as the aforesaid persons are nationals of the State which they represent and do not engage in any lucrative occupation outside their official duties in the State to which they are accredited. The exemption shall not apply to taxes to be levied under Articles I, II and V or to be deducted at source as specified in Article VI.

Article XIII.

Shipping undertakings on the Danube shall not be liable to duties imposed in connection with the exercise of an industry except in the State in which the head office or the actual business centre of the undertaking is situated.

Article XIV.

The Finance Ministers of the two States shall conclude special agreements with a view to avoiding double taxation in cases which are not expressly provided for in the present Treaty and to removing any hardships which may still continue after the application of the principles of the present Treaty.

Article XV.

The present Treaty shall apply :

(a) In the Kingdom of Hungary :

To taxation on war profits, as from the beginning of the first year of the war (war business year) ;

To the Redemption of Property tax, as from the date on which the laws regulating the application of the Treaty came into force.

To other taxation, as from the commencement of the fiscal year 1920 ;

(b) In the German Reich :

To war taxes and war levies, as from the beginning of the first year of war (war business year) ;

To the Reich Emergency Contribution, as from the date of the coming into force of the law concerning the aforesaid Contribution ;

And further, to taxes levied by the Reich or by the various States on real property and industrial undertakings, as from the commencement of the fiscal year 1920.

Article XVI.

(1) The present Treaty, the original text of which is drawn up in Hungarian and German, shall be ratified and the instruments of ratification shall be exchanged as soon as possible at Budapest. It shall enter into force on the date of the exchange of the instruments of ratification and shall remain in force until it is denounced by one of the Contracting States, such denunciation to take place at least six months before the expiration of any calendar year. If it is denounced within the prescribed time-limit, the Treaty shall cease to be in force at the expiration of the calendar year in question.

(2) Both texts of the Treaty shall be authentic. The ratified Treaty shall be published in both the authentic texts in the official Collection of Laws of each of the two States.

In faith whereof the Plenipotentiaries of the two States have signed the present Treaty and thereto affixed their seals.

BERLIN, *November 6, 1923.*

(Signed) EMICH.

(Signed) MALTZAN.

(Signed) Dr KNEPPO SÁNDOR.

(Signed) ERNST PEIFFER.

FINAL PROTOCOL.

On the occasion of the signature of the Treaty concluded this day between the Kingdom of Hungary and the German Reich for the adjustment of taxation at home and abroad and, in particular, for the avoidance of double taxation in the field of direct taxation, the under-signed Plenipotentiaries have made the following joint declarations which shall form an integral part of the Treaty :

(1) The following shall be regarded as constituting direct taxes for the purposes of the present Treaty :

In the Kingdom of Hungary : all existing and future taxes on income, profits (*Ertrag*) and capital levied on behalf of the State and on behalf of the communes, as also all taxes supplementary to the taxes mentioned above.

In the German Reich : all existing and future taxes on income and capital levied on behalf of the Reich and the States and all existing and future taxes levied by the States on real property and on industrial undertakings, and all taxes supplementary to the taxes mentioned above.

The two Contracting Parties recognise that succession duties do not fall within the category of direct taxes for the purposes of the present Treaty. Succession duties shall form the subject of a special treaty.

In cases of uncertainty the question whether a tax falls within the categories mentioned above shall be settled by agreement between the Finance Ministers of the two States.

(2) The provisions of Article VII, paragraph (1), shall not preclude the levying of taxes upon persons who, although they are not domiciled or habitually resident in one of the Contracting States, reside nevertheless in one of the said States for the purpose of engaging in a lucrative occupation.

(3) It is agreed that students who reside in one of the Contracting States solely for the purpose of study shall not be liable in the State, in which they reside as students, to taxation in respect

of money received by them from relatives domiciled in the other Contracting State for purpose of maintenance and study, provided that by far the greater part thereof is used for these purposes.

4. The provisions of the present Treaty shall not prevent the levying of taxation in conformity with the domestic legislation of the two countries on any profits which may arise from alienations or speculations and which have been acquired in consequence of a non-commercial alienation of the property mentioned in Article I (*nicht gewerbmässige Veräusserung*).

5. It is agreed that any taxation already effected must be rectified in accordance with the provisions of the present Treaty if the taxpayer so requests within a period of two years from the coming into force of the present Treaty, or if the fiscal authorities themselves consider it necessary within the limits of their legal competence to make a rectification of this kind.

6. In order to prevent any doubt arising in regard to the interpretation of Article XII the Contracting States declare themselves agreed that this Article shall not affect more extensive privileges and exemptions based on the general rules of international law.

7. In so far as the arrangement established by the present Treaty affects the taxes or concerns the authorities of the States of the German Reich, it is subject to the approval of the States, where such approval is requisite.

BERLIN, November 6, 1923.

(Signed) EMICH.

(Signed) Dr KNEPPO SANDOR.

(Signed) MALTZAN.

(Signed) ERNST PEIFFER.